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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/726,075	11/29/2000	Peter Gansen	64251-006	9638

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EXAMINER

COONEY, JOHN M

ART UNIT

PAPER NUMBER

1711

DATE MAILED: 01/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Application No.

09/726,075

Applicant(s)

GANSEN ET AL.

Examiner

John m Cooney

Art Unit

1711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 November 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13,39-48,50,51 and 53-68 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13,39-48,50,51 and 53-68 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|-------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>1104</u> . | 6) <input type="checkbox"/> Other: _____ |

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11-2-04 has been entered.

The following comments and rejections set forth below are the only rejections set forth or maintained. All other rejections are withdrawn in light of applicants' amendments and/or accompanying remarks.

Initial Comments/Claim Interpretation

Although the issue of the meaning of "gel" is not of question in the rejections set forth below, it is maintained that applicants' employment of the term "gel" is not assessed the meaning suggested at page 11 of applicants' current remarks, but, rather, the definition which the claims now recite. Accordingly, examiner's comments in the final Office action of 5-5-04 are held to still stand. (i.e. "Though applicants are entitled to act as their own lexicographer, the originally disclosed supporting disclosure does not recite that by gel applicants mean the materials which are recited and discussed in the

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paragraph bridging pages 8 and 9 of applicants' remarks on reply. Examiner does not give the term "gel" the meaning assigned by applicants in their remarks, and, accordingly, applicants' arguments relying on such implied meaning are unpersuasive of patentability over any of the above cited references.").

Claim 67 refers to a "seam cushion" rather than a "seat cushion" and such needs to be corrected for clarity purposes.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 63, 67, and 68 are rejected under 35 U.S.C. 102(e) as being anticipated by Kenndoff et al.(5,844,013).

Kenndoff et al. disclose preparations of articles comprising adhered articles of polyurethane gel foams and polyurethane films reading on foams which read on the articles of applicants' claims (see column 4 line 38 - column 6 line 39, and column 10 in its entirety, as well as the entire document). The claims do not provide structural features to distinguish their molded articles/seat cushions, the urethane components are not defined so as to distinguish over those of the reference, and the adhesive properties between the layers defined by the reference are implicit and inherent to the materials utilized. Additionally, the seat cushions as defined by the claims do not differ from the materials of Kenndoff et al. despite Kenndoff et al.'s intended use of their materials as wound dressing materials.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-13, 39-48, 50-51, and 53-68 are rejected under 35 U.S.C. 103(a) as being unpatentable over AU 199929072 B2 in view of Burgdorfer et al.(4,456,642).

AU 199929072 B2 discloses seat members comprising shaped/molded polyurethane foam cushions which may contain, "incorporated into", a top layer which comprises a gel material (see the entire abstract).

AU 199929072 B2 differs from applicants' claims in that it doesn't specify the make-up of its gel layer. However, Burgdorfer et al. disclose preparations of gel materials employed in composite article manufacture inclusive of car seats for the purpose of providing a padding effect (see the entire document). Accordingly, it would have been obvious for one having ordinary skill in the art to have employed the gel foam material of Burgdorfer et al. in the preparations of AU 199929072 B2 for the purpose of providing their padding effect in order to arrive at the products of applicants' claims with the expectation of success in the absence of a showing of new or unexpected results.

Some of applicants' claims differ from AU 199929072 B2 in that a gel foam layer prepared from the claim defined blends of polyols is not required. However, Burgdorfer et al. employs mixtures of polyols having OH number values within a range of OH number values meeting the endpoint values of each polyol component of applicants' claims (see column 4 lines 9-13, as well as, the entire document). Accordingly, it would have been obvious for one having ordinary skill in the art to have employed blends of polyols over the full range of OH values disclosed by Burgdorfer et al. within the teachings of Burgdorfer et al. for the purpose of providing their OH functional effect so as to arrive at the gel foam material layer to be employed in the preparations of AU

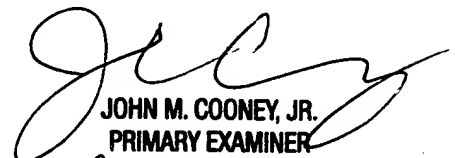
199929072 B2 in order to arrive at the products of applicants' claims with the expectation of success in the absence of a showing of new or unexpected results.

Additionally, although Burgdorfer et al. recites avoidance of OH values above 112, a value of 112 is not particularly excluded. Also, Burgdorfer et al.'s materials are recited to be "essentially free" of materials having OH values of greater than 112 (see column 3 lines 25-27), which is indicative that employment of amounts of polyols having OH values beyond 112 would not destroy the operability of the reference. Further, it has been held that all disclosures of the prior art, including unpreferred or auxiliary embodiments, must be considered in determining obviousness. In re Mills, 176 USPQ; In re Lamberti, 192 USPQ 278; In re Boe, 148 USPQ 507.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Cooney whose telephone number is 571-272-1070. The examiner can normally be reached on M-F from 9 to 6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck, can be reached on 571-272-1078. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


JOHN M. COONEY, JR.
PRIMARY EXAMINER
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